IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

FAO.No. 101 of 2007()

AGAINST THE ORDER IN IA.205/07 IN
OS.2/2007 of DISTRICT COURT, THALASSERY

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APPELLANTS/DEFENDANTS

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1. KUKKU SURENDRAN, FILM DIRECTOR,
SUNIL, R.G. 101, PONGUMOODU,
THIRUVANANTHAPURAM - 11.

2. SUNIL SURENDRAN, FILM DIRECTOR,
SUNIL, R.G.101, PONGUMOODU,
THIRUVANANTHAPURAM - 11

BY ADV. SMT.T.RESMI DAMODARAN
SRI.M.MANOJKUMAR

RESPONDENTS: PLAINTIFF/3RD DEFENDANT

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1. SUDHAKARAN KONDOTH, S/O.SREEDHARAN,
KUNHIVALAPPIL HOUSE, P.O.KANDOTH,
PAYYANNUR, KANNUR.

2. NEERAJ MENON, LAKSHMI SADAN,
PALACE ROAD, THRISSUR.

BY ADV. SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 26/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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F.A.O NO. 101 OF 2007

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Dated this the 26th day of March, 2007

J U D G M E N T

The challenge in this appeal is against the ex parte order passed in I.A. No.205 of 2007 in O.S. No.2 of 2007 by the District Judge, Thalassery by which the appellants, defendants in the suit, were restrained from producing, exhibiting or releasing a Malayalam Movie by name "Anandam". The case of the first respondent, plaintiff in the suit, is that the Movie in question is based on a story written by him. When he explored the possibility of making a film, the first appellant showed interest in seeing the script and subsequently without the knowledge and consent of the first respondent the appellants started production of the Movie as if it is written by the second respondent, one Mr.Neeraj Menon. Hence the first respondent filed the aforesaid suit for declaration and also for injunction. In that suit he filed I.A. No.205 of 2007 under Order XXXIX Rule 1 CPC for injunction. The trial court passed an ex parte order of injunction restraining the defendants from producing, exhibiting or

releasing the film. Challenging that order, the defendants have filed this appeal.

2. After hearing both sides for sometime, I am of the view that to pass an effective order in the injunction application, it is necessary to have a counter affidavit of the appellants. It is true that the appellants have specifically denied the contention that they are making a Movie using the story written by the first respondent. It is contended that there is absolutely no similarity between the main theme of the Movie which they are producing and the story projected. I do not think I will be justified in entering into any decision on merits without seeing a counter affidavit or materials. It is also contended that there cannot be a copyright for an idea. It is also submitted that shooting of the entire film is over and it is ready for release to the theaters and if an injunction is passed against the release of the film, nobody will be benefited. It is submitted that the case is posted to 29.5.2007 before the District Court, Thalassery.

3. Considering the facts and circumstances of the case, I am of the view that all these contentions are to be raised before

the District Judge, who will hear and dispose of the case as expeditiously as possible, at any rate, within ten days from the date of receipt of a copy of this judgment. The learned District Judge shall make every endeavour to suo moto advance the hearing of the application to 29.3.2007 or any date immediately after that date. Both sides will appear before the District Court on 29.3.2007. It is open to the appellants to raise all contentions which they have raised before this Court, before the District Judge. I make it clear that I have not expressed any opinion regarding the merits of the case.

4. Appeal is disposed of as above.

I.A. No.1101 of 2007 shall stand closed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. OF

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J U D G M E N T

15TH MARCH, 2007